

### **REMARKS**

This responds to the Final Office Action mailed on August 15, 2005, and the references cited therewith.

Claims 1, 13, and 25 are amended, no claims are canceled, and no claims are added; as a result, claims 1-25 are now pending in this application. The amendments are fully supported by the specification and do not add any new matter.

#### **§103 Rejection of the Claims**

Claims 1-3, 8-10, and 12-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf (U.S. 5,794,221) in view of “The Official eBay Guide to Buying, Selling, and Collecting Just About Anything” (hereinafter referred to as “eBay” ).

Applicants respectfully submit that, in light of the amendments, a *prima facie* case of obviousness cannot be made because, even if combined, the cited references fail to teach or suggest all of the elements of Applicants’ claimed subject matter. The reference (or references when combined) must teach or suggest all of the elements of the claimed subject matter.<sup>1</sup>

Amended claim 1 recites, in pertinent part, “determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation.” (Emphasis Added throughout) The Office Action, at page 4, in rejecting the corresponding limitation of previous claim 1 (currently amended) alleges that the limitation is disclosed by Egendorf at col. 5, line 66 to col. 6, line 8. Egendorf in the cited passage states:

“ . . . prior to billing of the transaction amount o the account of the customer . . . the provider can obtain approval from a third party to bill the transaction amount to the billing account . . . approval must be obtained from a third party, i.e., the bank issuing the credit card or with whom the bank account was established.”<sup>2</sup>

The above passage describes obtaining a bank approval before billing the account of the customer. In contrast, the amended claim 1 requires *determining that the first participant is*

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<sup>1</sup> M.P.E.P. § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991))

<sup>2</sup> Egendorf, col. 5, line 66 to col. 6 line 8

*qualified to accept the at least one of the plurality of payment instruments.* The Office Action has equated the claimed *first participant* with the “provider” in Egendorf. (*Id.*) Accordingly, the customer in the cited passage is not the same as the claimed *first participant*. In addition, the cited passage is silent regarding *the determination being based on a risk management operation*. In other words, Egendorf does not disclose the amended claim 1 limitation of “*determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation.*” The Office Action does not point to and Applicants could not find any passage in eBay’s disclosure that discloses the discussed limitation of the amended claim 1.

Furthermore, the amended claim 1 recites, “determining a risk level of . . . to determine whether the second participant is qualified to use a payment instrument.” In rejecting claim 1, the Office Action, at page 3, admits, “Egendorf fails to disclose that a risk analysis is performed based on feedback information provided by the peers of the second participant.” However, the Office Action alleges, “*eBay* further discloses that a risk analysis is done using feedback information provided by peers of the second participant at pages 31-35.” *Id.* Applicants respectfully submit that cited passage from eBay does not teach or suggest the claimed “determining a risk level,” much less the claimed “risk level to determine whether the second participant is qualified to use a payment instrument.”

In contrast, *eBay* at pages 31-35 describes a mechanism for sharing a user’s feedback with other users. According to *eBay*, users share feedback to allow “buyers and sellers to establish a track record in the community that can be viewed by potential buyers and sellers.”<sup>3</sup> As such, Applicants respectfully submit that, at least for the reasons set forth above, Egendorf and *eBay*, individually or in the combination, do not teach or suggest each and every element of claim 1. Thus claim 1 and its dependent claims 2-3, 8-10, and 12 are allowable.

The same arguments as presented with respect to claim 1 are also applicable to a consideration of claims 13 and 25. Applicants respectfully submit that, for at least the reasons noted above, the combination of Egendorf and *eBay* does not teach or suggest each and every element of claims 13 and 25. Thus, claims 13 and 25 and the dependent claims 14-24 are allowable.

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<sup>3</sup> *eBay* at page 31

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Gifford (U.S. 6,049,785).

Claims 5-6 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Watson (U.S. 5,978,780).

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Tessler (“eBay’s Deal with Wells Fargo Allows Sellers to Accept Credit”).

Each of claims 4, 5-7, and 11 depend, directly or indirectly, on one of claims 1 or 13. As noted above, the combination of Egendorf and *eBay* does not teach or suggest each and every element of claims 1 or 13. For the combination of Egendorf, *eBay*, and Gifford, Watson or Tessler to teach or suggest each and every element of claims 4, 5-7, and 11, Gifford, Watson or Tessler must teach what the combination of Egendorf and *eBay* are lacking. The Office Action does not point to and the Applicants could not find a passage in Gifford, Watson or Tessler that teaches or suggests the limitations of “*determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation*” and “*determining a risk level of . . . the risk level to determine whether the second participant is qualified to use a payment instrument selected by the second participant from the at least one payment instrument acceptable to the first participant,*” as recited in the amended claim 1. As such, Applicants respectfully submit that the combination of Egendorf, *eBay*, and Gifford, Watson or Tessler does not teach or suggest each and every element of claims 4, 5-7, or 11. Accordingly, claims 4, 5-7 and 11 are allowable.

Thus, it is respectfully requested that the claim rejections under 35 U.S.C. § 103(a) be reconsidered, in light of the amendments, and withdrawn.

#### Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants’ silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut

any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

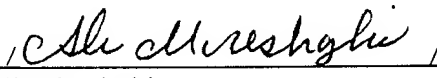
Respectfully submitted,

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Date October 31, 2007

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31st day of October 2007.

PETER REBUFFONI

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